IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 129 of 2007
In
COMPANY PETITION No. 157 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRI AMIRULLAKHAN DOSTALIKHAN PATHAN - Applicant(s)

Versus

O.L. OF CALICO MILLS - Respondent(s)

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Appearance :
MR MA BUKHARI for Applicant(s) : 1,
OFFICIAL LIQUIDATOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 16/03/2007

ORAL JUDGMENT

Present Judges summons has been taken out by one of the ex workman of the company in liquidation for an appropriate order directing the Official Liquidator of the company in liquidation to pay an amount of Rs.3372.35 with interest as per the judgment and order passed by the Controlling Authority dated 29-6-2004.

2. It is required to be noted that the present application is on the basis of the order passed by the Controlling Authority dated 29-6-2004. On going through the said order, it is not in dispute that the Official Liquidator of the company in liquidation was not a party to the said proceedings. The company i.e. M/s Calico Mills is ordered to be wound up in 1998 and the order which has been relied upon is passed in 2004 i.e. after the period of winding up and neither the applicant has sought any permission to proceed further with the Case No.32 of 1994 pending before the Controlling Authority under the Payment of Gratuity Act as required under section 446 of the Companies Act, 1956 nor made the Official Liquidator as party to the said proceedings. Under the circumstances, no order can be passed to make the payment on the basis of the said order, which is in breach of section 446 of the Companies Act, 1956. Hence, the said application is dismissed. No costs.

(M.R. SHAH, J.)

shekhar